

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140070-U

NO. 4-14-0070

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 24, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
RUEBEN JOHNSON, JR.,	)	No. 07CF1033
Defendant-Appellant.	)	
	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Pope and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Defendant's guilty plea to being an armed habitual criminal was not "invalid" because one of the predicate felonies for that offense was subsequently held unconstitutional by the supreme court where the record showed defendant's criminal history was otherwise sufficient to support his conviction for the challenged offense.

(2) Fines improperly imposed by the circuit clerk must be vacated and the matter remanded to the trial court for the imposition of mandatory fines applicable to defendant.

¶ 2 Defendant, Rueben Johnson, Jr., pleaded guilty to being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2006)) and was sentenced to 18 years in prison. He appeals, arguing his guilty plea is "invalid" because one of the predicate felony offenses for his armed habitual criminal conviction—aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1) (West 2000))—was held unconstitutional by the supreme court in *People v. Aguilar*,

2013 IL 112116, ¶ 22, 2 N.E.3d 321, rendering that conviction void. Defendant also challenges the imposition of fines he maintains were improperly imposed by the circuit court clerk. We affirm in part, vacate in part, and remand with directions.

¶ 3

### I. BACKGROUND

¶ 4 On September 13, 2007, the State charged defendant with being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2006)) (count I), AUUW (720 ILCS 5/24-1.6(a)(1) (West 2006)) (count II), unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)) (count III), and aggravated assault (720 ILCS 5/12-2(a)(1) (West 2006)) (count IV). In connection with the armed habitual criminal charge, the State alleged defendant possessed a firearm after having been convicted previously of both armed robbery (case No. 01-CF-890) and AUUW (case No. 01-CF-468).

¶ 5 On December 14, 2009, defendant entered an open plea of guilty to being an armed habitual criminal. In exchange for his plea, the State agreed to the dismissal of the three remaining counts against him. As part of its factual basis, the State referenced defendant's previous convictions for armed robbery and AUUW.

¶ 6 On April 16, 2010, the trial court conducted defendant's sentencing hearing. In its argument before the court, the State asserted defendant's criminal history exceeded the minimum requirements of the armed habitual criminal statute, noting defendant had three previous qualifying felony convictions and the statute required only two. Further, defendant's presentence investigation report showed he had prior felony convictions for AUUW (case No. 01-CF-468), armed robbery (case No. 01-CF-890), and home invasion (case No. 01-CF-890). At the conclusion of the hearing, the court sentenced defendant to 18 years in prison.

¶ 7 On April 27, 2010, defendant filed a motion to reconsider his sentence, arguing it was excessive; however, his counsel failed to file a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). On August 24, 2010, the trial court denied defendant's motion and defendant appealed. The record shows defendant filed three appeals and, in connection with each appeal, this court remanded to the circuit court for strict compliance with Rule 604(d). *People v. Johnson*, No. 4-10-1001 (May 6, 2011) (order for summary remand); *People v. Johnson*, 4-11-1124 (Mar. 20, 2012) (order for summary remand); *People v. Johnson*, 4-13-0688 (Nov. 18, 2013) (order for summary remand).

¶ 8 On December 18, 2013, defendant's counsel filed a proper Rule 604(d) certificate. On January 22, 2014, the trial court conducted a hearing and again denied defendant's motion to reconsider his sentence.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant first argues his guilty plea to being an armed habitual criminal was "invalid." He notes that elements of the charged offense include possessing a firearm and having previously been convicted of two qualifying felony offenses. Defendant points out that the charging instrument in his case set forth one of his two qualifying felonies as his 2001 conviction for AUUW. However, defendant contends that offense was based upon a statutory subsection that has been found unconstitutional and, therefore, was unacceptable for use as a predicate felony for his armed habitual criminal charge.

¶ 12 Here, defendant was charged pursuant to the Criminal Code of 1961 (Code), which provides that "[a] person commits the offense of being an armed habitual criminal if he or

she \*\*\* possesses \*\*\* any firearm after having been convicted" of at least two qualifying offenses, including a forcible felony as defined in the Code, AUUW, and home invasion. 720 ILCS 5/24-1.7(a) (West 2006). However, following defendant's conviction in the instant case, the supreme court determined the Class 4 form of AUUW, as set forth in section 24-1.6(a)(1), (a)(3)(A), (d) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) was facially unconstitutional because it violated "the right to keep and bear arms, as guaranteed by the second amendment to the United States Constitution." *Aguilar*, 2013 IL 112116, ¶ 22, 2 N.E.3d 321. "When a statute is held facially unconstitutional, *i.e.*, unconstitutional in all its applications [citation], the statute is said to be void *ab initio*." *People v. Blair*, 2013 IL 114122, ¶ 28, 986 N.E.2d 75. "A void conviction for the Class 4 form of AUUW found to be unconstitutional in *Aguilar* cannot now, nor can it ever, serve as a predicate offense for any charge." *People v. Fields*, 2014 IL App (1st) 110311, ¶ 44, 6 N.E.3d 180.

¶ 13 Here, the record reflects defendant's 2001 AUUW conviction was for the now unconstitutional Class 4 form of the offense. However, as the State points out, under the particular facts presented by this case, such circumstances do not require a finding that defendant's plea agreement was invalid or that his conviction for being an armed habitual criminal is void.

¶ 14 In *People v. Green*, 2014 IL App (4th) 120454, ¶ 3, 11 N.E.3d 838, this court addressed the issue presented by this appeal under similar factual circumstances. That case involved a fully negotiated plea agreement, whereby the defendant pleaded guilty to being an armed habitual criminal in exchange for a 10-year prison sentence and the dismissal of two other counts against him. *Green*, 2014 IL App (4th) 120454, ¶ 7, 11 N.E.3d 838. The State's factual basis established the defendant had a previous conviction for AUUW that was used to satisfy the

requirements of the armed habitual criminal statute. *Green*, 2014 IL App (4th) 120454, ¶ 7, 11 N.E.3d 838. Ultimately, we determined the defendant's fully negotiated plea agreement was not void and declined to remand the matter so that the defendant could withdraw his plea. *Green*, 2014 IL App (4th) 120454, ¶ 15, 11 N.E.3d 838.

¶ 15 Initially, this court noted it was unclear from the record whether the defendant's prior AUUW conviction had been under the now unconstitutional portion of the statute. *Green*, 2014 IL App (4th) 120454, ¶ 13, 11 N.E.3d 838. However, we also stated that, even if the defendant's AUUW conviction fell under the section of the statute held unconstitutional in *Aguilar*, "we would not find his fully negotiated plea agreement invalid or his conviction for armed habitual criminal void." *Green*, 2014 IL App (4th) 120454, ¶ 14, 11 N.E.3d 838. To support that position, we pointed out that the record showed the "defendant clearly ha[d] at least two prior felonies—other than the conviction for [AUUW]—that would satisfy the armed habitual criminal statute." *Green*, 2014 IL App (4th) 120454, ¶ 14, 11 N.E.3d 838. Further, we noted the importance of the plea-bargaining process to the criminal justice system and stated as follows:

"Although the *Aguilar* decision may have rendered [the] defendant's conviction for [AUUW] unconstitutional—which is not demonstrated by the record before us—[the] defendant had at least two other qualifying felony convictions that satisfied the armed habitual criminal statute. Defendant received the benefit of his bargain (two additional charges were dropped and a sentence agreed to) and he was not prejudiced (as the prosecutor could have listed another qualifying felony conviction and he received the

benefit of his bargain). His fully negotiated plea agreement is not void and we decline to remand so defendant may withdraw his guilty plea." *Green*, 2014 IL App (4th) 120454, ¶ 15, 11 N.E.3d 838.

¶ 16 Similarly, in this case defendant had at least one other qualifying felony conviction which could have replaced his AUUW conviction and satisfied the Code's requirements for the armed habitual criminal offense. Specifically, the record shows that aside from defendant's prior convictions for AUUW and armed robbery (which was indisputably a qualifying offense and its use as an element of the charged offense is not challenged on appeal), he also had a previous conviction for home invasion. Home invasion is one of the qualifying offenses under section 24-1.7(a) of the Code, which sets forth the armed habitual criminal offense. 720 ILCS 5/24-1.7(a) (West 2006). Thus, although the record reflects defendant's AUUW conviction was rendered unconstitutional by *Aguilar*, defendant suffered no prejudice. Additionally, as in *Green*, defendant received the benefit of his bargain with the State, *i.e.*, the dismissal of additional charges against him.

¶ 17 In his reply brief, defendant attempts to distinguish *Green* on the basis that the record in this case clearly showed defendant's 2001 AUUW conviction was based upon the unconstitutional portion of the AUUW statute. However, he fails to address the portions of this court's decision in *Green* that stated we would not find the defendant's plea invalid or his conviction for being an armed habitual criminal void "[e]ven if [we] were to conclude [the] defendant's conviction for [AUUW] fell under the Class 4 form of the section of the statute ruled unconstitutional in *Aguilar*." *Green*, 2014 IL App (4th) 120454, ¶ 14, 11 N.E.3d 838. For the same rea-

sons espoused in *Green*, we find defendant's open plea agreement in this case was not void and decline to remand so that he may withdraw his guilty plea.

¶ 18 On appeal, defendant next argues the circuit clerk improperly imposed fines against him. Specifically, he challenges the imposition of a \$20 Violent Crime Victims Assistance fine and a \$5 Children's Advocacy Center fine. Defendant argues the fines must be vacated and the matter remanded to the trial court for the proper imposition of only the Violent Crime Victims Assistance fine. He maintains the Children's Advocacy Center fine cannot be reassessed on remand as it was not an authorized fine at the time he committed the offense at issue.

¶ 19 The State concedes that the circuit clerk improperly assessed the two fines referenced by defendant and agrees those fines should be vacated and the cause remanded to the trial court for imposition of a \$4 Violent Crime Victims Assistance fine (725 ILCS 240/10(b) (West 2006)). However, the State also argues that, on remand, the trial court should impose additional mandatory fines provided for in statutes that were in effect at the time of defendant's offense—specifically, a \$10 arrestee's medical costs fine (730 ILCS 125/17 (West 2006)) and a \$10 criminal surcharge fine (730 ILCS 5/5-9-1(c) (West 2006)). Defendant disagrees with this latter portion of the State's position, arguing the State may not make a freestanding claim of error from the defendant's sentence. Additionally, defendant argues the void sentence rule should not be applied to allow the imposition of additional fines as it is based on outdated principles of constitutional law.

¶ 20 We accept defendant's argument and the State's concession that the circuit clerk improperly imposed the two fines specified by the parties. "In Illinois, it is well settled the trial court must impose fines as a component of a defendant's sentence" and "[t]his court has consist-

ently held the circuit clerk does not have the power to impose fines.' " *People v. Smith*, 2014 IL App (4th) 121118, ¶ 18, 18 N.E.3d 912 (quoting *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246). Here, the record reflects the Violent Crime Victims Assistance fine and the Children's Advocacy Center fine were improperly imposed by the circuit clerk. Thus, we vacate those fines and remand to the trial court for the imposition of mandatory fines applicable to defendant. See *Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246 (vacating the circuit clerk's improper imposition of fines and remanding to the trial court for the reimposition of mandatory fines).

¶ 21 In so holding, we disagree with defendant's contention that the mandatory fines referenced by the State and not imposed at all in the underlying proceedings—the arrestee's medical costs fine (730 ILCS 125/17 (West 2006)) and the criminal surcharge fine (730 ILCS 5/5-9-1(c) (West 2006))—may not be imposed on remand. As stated, defendant initially characterizes the State's position as an improper freestanding claim of error from his sentence. However, in *People v. Warren*, 2014 IL App (4th) 120721, ¶ 150, 16 N.E.3d 13, this court rejected a similar argument by a defendant. In that case, the defendant argued that because he did not challenge the value of a particular fine imposed by the trial court on appeal, the State could not raise the argument that the fine should be increased when the matter was remanded to the trial court to address other fine-related sentencing issues. *Warren*, 2014 IL App (4th) 120721, ¶¶ 148-150, 16 N.E.3d 13. In rejecting the defendant's contention, we stated as follows:

"In this case, defendant's notice of appeal indicates he is challenging his conviction and sentence. Therefore, defendant placed his entire sentence, which includes the street-value fine [citation], be-

fore this court for review. \*\*\* We do not, as defendant suggests, characterize the State's pointing out of a sentencing error to be a 'free-standing claim of error,' because defendant put his entire sentence at issue." *Warren*, 2014 IL App (4th) 120721, ¶ 150, 16 N.E.3d 13.

¶ 22 In this case, defendant similarly placed his entire sentence at issue. Thus, the State could properly point out sentencing errors which should be corrected on remand.

¶ 23 Additionally, in *Warren*, 2014 IL App (4th) 120721, ¶ 152, 16 N.E.3d 13, we held the State could properly "seek to correct a void or partially void judgment on appeal." "A sentence that does not conform to a statutory requirement is void, is not subject to waiver, and may be attacked at any time." *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 16, 976 N.E.2d 643 (citing *People v. Thompson*, 209 Ill. 2d 19, 27, 805 N.E.2d 1200, 1204-05 (2004)).

¶ 24 Despite this authority, defendant argues "there was no void order to correct," maintaining "there is authority for the proposition that judgments should be considered void only in the narrowest of circumstances and where subject matter or personal jurisdiction is lacking." To support his position, defendant cites case law holding "that the jurisdiction of the circuit court is conferred by the constitution, not the legislature" and that "[o]nly in the area of administrative review is the court's power to adjudicate controlled by the legislature." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 336, 770 N.E.2d 177, 185 (2002); see also *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 529-30, 759 N.E.2d 509, 518-19 (2001) (finding that, after a 1964 amendment to the constitution gave circuit courts unlimited original jurisdiction of all justiciable matters, "the 'inherent power' requirement [(of the rule of law that a judg-

ment or order is void where it is entered by a court that lacks jurisdiction or the inherent power to enter the order involved)] applie[d] to courts of limited jurisdiction and administrative agencies").

¶ 25 However, we note that in the context of criminal proceedings, the supreme court has continued to hold that a defendant's sentence is void where it does not conform with statutory requirements. *People v. Easley*, 2014 IL 115581, ¶ 23, 7 N.E.3d 667. See also *People v. Donelson*, 2013 IL 113603, ¶ 15, 989 N.E.2d 1101; *People v. Jackson*, 2011 IL 110615, ¶ 10, 955 N.E.2d 1164; *People v. White*, 2011 IL 109616, ¶ 20, 953 N.E.2d 398; *People v. Petrenko*, 237 Ill. 2d 490, 503, 931 N.E.2d 1198, 1206 (2010); *People v. Hillier*, 237 Ill. 2d 539, 547, 931 N.E.2d 1184, 1188 (2010); *People v. Whitfield*, 228 Ill. 2d 502, 511, 888 N.E.2d 1166, 1172 (2007). Specifically, in *White*, 2011 IL 109616, ¶ 20, 953 N.E.2d 398, the supreme court recently stated as follows:

"We have 'repeatedly recognized that the legislature has the power to prescribe penalties for defined offenses, and that power necessarily includes the authority to prescribe mandatory sentences, even if such sentences restrict the judiciary's discretion in imposing sentences.' [Citation.] A court does not have authority to impose a sentence that does not conform with statutory guidelines [citations] and a court exceeds its authority when it orders a lesser or greater sentence than that which the statute mandates [citations]. In such a case, the defendant's sentence is illegal and void. [Citations.]"

¶ 26 Here, we continue to adhere to supreme court precedent applicable to criminal

proceedings and find that a sentence which does not comply with statutory requirements is void. As stated in *Warren*, the State may seek to correct void judgments on appeal. Thus, its request in the instant case—that the trial court impose additional mandatory fines against defendant on remand—was not improperly raised.

¶ 27 Accordingly, we vacate the circuit clerk's imposition of the \$20 Violent Crime Victims Assistance fine and \$5 Children's Advocacy Center fine. Additionally, we remand the matter so that the trial court may impose the mandatory fines applicable to defendant.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we vacate the circuit clerk's imposition of fines and remand to the trial court with directions that it impose mandatory fines applicable to defendant. We otherwise affirm the court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed in part and vacated in part; cause remanded with directions.